

March 9, 2006

VIA ECFS

Marlene M. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Ex Parte: WC Docket 05-261, WC Docket No. 04-313 and
CC Docket No. 01-338**

Dear Ms. Dortch:

Attached for inclusion in the above referenced dockets in further support of Fones4All Corporation's ("Fones4All") Emergency Petition for Interim Waiver is the Opposition of five California CLECs to SBC California's Emergency Motion to Compel Transition.¹ SBC California's "Emergency Motion" was recently denied in an Administrative Law Judge Ruling that Petitioner Fones4All submitted in the above-captioned dockets. The CLECs' Opposition was accompanied by five Declarations, which are attached to their Opposition, that outline the many and varied ways in which SBC California has been making it impossible for CLECs – particularly CLECs transitioning to a UNE-L strategy – to meet the March 10 deadline.

The interconnection agreement Amendment that the California Public Utilities Commission ("CPUC") approved in D.06-01-043 provides, at Section 2.1.3.1 that CLECs must comply with this Commission's March 10 deadline "unless otherwise agreed to by the Parties." As detailed in the attached CLEC Declarations, several CLECs have asked for extensions from SBC California, in light of SBC's actions that have rendered compliance with the deadline impossible. SBC's refusal to grant even a single extension, to the best of the CLECs' knowledge, constitutes, under the circumstances, an unreasonable withholding of consent to such extensions.

The attached Opposition and accompanying Declarations make clear that Fones4All is not the only carrier suffering from SBC California's failures, errors and omissions. Rather, the fundamental problem with the spectacularly botched transition process in California is that SBC has failed to put into place the robust infrastructure (including ordering systems and account team support) that it represented in numerous filings to this Commission (and upon which the

¹ See *Administrative Law Judge's Ruling Denying SBC California's Emergency Motion to Compel UNE-P Transition, Application of Pacific Bell Telephone Company d/b/a SBC California for Generic Proceeding to Implement Changes in Federal Unbundling Rules Under Sections 251 and 252 of the Telecommunications Act of 1996* (Mar. 8, 2006) ("Decision Denying SBC Motion") available at <http://www.cpuc.ca.gov/PUBLISHED/RULINGS/54267.htm>.

Commission relied in the *TRRO* decision²) that it had in place or was capable of putting in place in order to ensure a smooth transition.³ The fact that SBC has failed to successfully convert in the last year (or even in the last 3 months) the 100,000 UNE-P lines that gave rise to its "Emergency Motion to Compel" demonstrates the fallacy of its representations in the *TRRO* docket regarding its batch hot-cut capabilities.

This Commission should also not overlook the fact that SBC California has successfully maneuvered the CPUC into not requiring a *TRO*- and TELRIC-compliant batch hot cut process in California. In fact, SBC (along with Verizon California) have petitioned the CPUC to eliminate from its D.05-07-043 – the Decision requiring that batch hot cut processes and rates be determined in the *TRO/TRRO* Sec. 252 arbitrations – any requirement that the Commission complete the work begun in the CPUC's *TRO* proceeding on batch hot cut processes and rates.

The result is that CLECs in California now face, at a minimum, significant financial penalties, assuming that SBC automatically and seamlessly converts the existing UNE-P lines to resale on March 11. At worst, CLECs face significant customer disruptions, as carriers struggle to comply with SBC's needlessly onerous ordering process, which refuses to allow carriers "migrate as-is" UNE-P customers to UNE-L, but instead requires each CLECs' order to be submitted as a much more complicated and labor intensive "CLEC-to-CLEC conversion with change" even though the CLEC is staying the same and no change in the actual service configuration is being requested.

In the face of SBC California's failure to implement the tools that it represented to this Commission in the *TRRO* proceeding it had in place to allow it to complete "20-25 hot cuts per hour," the Commission should grant Fones4All's Emergency Petition for Interim Waiver in California and order SBC California to provide every available resource to complete the transition as quickly as possible, including ordering SBC to allow carriers to submit orders as "as

² See In the Matter of Unbundled Access to Network Elements (WC Docket No. 04-313); Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket NO. 01-338), *Order on Remand*, 20 FCC Rod 2533 (2005) ("*Triennial Review Remand Order*" or "*TRRO*"), petitions for review pending, *Covad Communications Co. et al. v. FCC et al.* Nos. 05-1095 et al (D.C. Cir.).

³ See *TRRO*, ¶ 211: "SBC's 'Enhanced Daily Process' places no limitations on the number of local service requests that a competitive LEC may submit. Its 'Defined Batch Process' allows competitive LECs to order up to 100 hot cuts per day per central office with a standard provisioning interval under two weeks, resulting in 20-25 hot cuts per hour. A 'Bulk Projects' process is available for projects with 100 or more lines." (citations omitted).

is" migration requests, and at the same time the Commission should order SBC to maintain existing UNE-P arrangements at existing prices until such time as the transition can be completed in order to preclude SBC from further slow-rolling the process in order to assess resale charges on the remaining UNE-P lines.

Sincerely,



Glenn Stever

Attorney for Call America, Inc.,
CF Communications, LLC d/b/a Telekenex;
Carstel, LLC; DMR Communications, Inc.;
Tri-M Communications, Inc. d/b/a
TMC Communications

**BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Pacific Bell Telephone
Company, d/b/a SBC California for
Generic Proceeding to Implement Changes
in Federal Unbundling Rules Under
Sections 251 and 252 of the
Telecommunications Act of 1996

Application 05-07-024
(Filed July 28, 2005)

PUBLIC (REDACTED) VERSION OF

**DECLARATION OF
JEWEL W. BRIDGERS, VP OF OPERATIONS
TRI-M COMMUNICATIONS, INC. d/b/a TMC COMMUNICATIONS
IN SUPPORT OF
OPPOSITION TO "EMERGENCY" MOTION UNDER SEAL**

**BY
CALL AMERICA, INC. (U-6598-C),
CURATEL, LLC (U 6610 C),
DMR COMMUNICATIONS, INC. (U 6735 C),
TCAST COMMUNICATIONS, INC. (U-5633-C), AND
TRI-M COMMUNICATIONS, INC. D/B/A TMC COMMUNICATIONS (U-5928-C)**

**[REDACTED INFORMATION INDICATED ON THE FOLLOWING PAGES WITH THE
SYMBOL: (* * *)]**

**DECLARATION OF
JEWEL W. BRIDGERS, VP OF OPERATIONS
TRI-M COMMUNICATIONS, INC. d/b/a TMC COMMUNICATIONS**

1. My name is Jewel W. Bridgers and I swear the following, subject to penalty for perjury. I am Vice President of Operations of Tri-M Communications, Inc. d/b/a TMC Communications. I have been an executive in the telephone industry since January, 1999. I have held various management and executive positions in the telephone industry beginning in June, 1991, involving service provisioning, customer service and network security. In November 2004, I joined TMC. In March of 2001, TMC applied for a Certificate of Public Convenience and Necessity from the California Public Utilities Commission ("Commission"). The Commission issued our Certificate at the end of July, 2001, and we commenced operations shortly thereafter.

2. TMC serves approximately * * * local exchange customers with just under * * * lines. Most of our customers are in the vicinity of Southern California. Until the past year, TMC served its local exchange customers primarily through the unbundled network element ("UNE") platform ("UNE-P"). We do have a number of local exchange customers that are already on SBC/AT&T's resale platform.

3. In March of 2005, after SBC/AT&T demanded the submission of a "transition plan" to move TMC's customers off of the UNE Platform, TMC submitted the plan that is attached as Exhibit 1 to this Declaration. As can be seen by reference to TMC's transition plan, we will be moving all of our UNE-P lines to resale. As of today's date (2/23/06), we have submitted orders for * * * UNE-P lines to be moved to resale. This leaves approximately * * * lines that remain to be migrated. By submitting customer orders at the rate of * * * per day, we should be able to complete our transition – assuming SBC/AT&T works the orders properly. Our experience to date, however, does not give us confidence that SBC/AT&T can work those orders in a timely fashion, even if we submit them timely. I lay out these problems in the next paragraphs of my Declaration.

4. Since August of 2005, more and more of our customers' accounts are unaccounted for in SBC/AT&T's systems. We once were able to type in one of our customer's telephone numbers and pull up the customer's profile with service detail. For about 70% of our customers, SBC/AT&T's systems return an 'account not found' notation. This prevents us from identifying the customer's platform (UNE-P or Resale) and service detail. Thus, we have trouble knowing which customer lines will need LSRs to switch them to resale.

5. Another way to review an account is by reviewing the order that was submitted to establish or modify service. For orders submitted prior to 2004, SBC/AT&T's systems return an 'account not found' notation. If no change orders

were placed after 2004, there is no way of identifying UNE vs. Resale unless we call SBC directly. About 50% of the time, SBC/AT&T's representatives are unable to view the records either, leaving us with no verification of the customer's account.

6. Once we have submitted an order to move a customer from UNE-P to resale, SBC/AT&T has 4 hours to respond with a rejection or a Firm Order Commitment ("FOC"). For migration orders, it is our experience that SBC/ST&T waits the full 4 hours before sending a rejection. At that time, we must submit a correction, and the clock starts again. At this rate, two corrections may be submitted within one day without a final confirmation of an order due date. We are finding this to occur with about 65% of our orders.

7. Even after SBC/AT&T's systems notify us that an order is "completed," in about 40% of the cases, we receive a notification from the customer that the change request is not, in fact, complete. Since the order is formally in a "completed status", the SBC/AT&T's CLEC support center (the "LLC") will not assist in the proper completion of the request. SBC/AT&T refers us to the repair department, even though the service issue is not really a repair issue. We are required to open a trouble ticket, which has a lead time of 4 hours before "resolution". 50% of the time there is no resolution and we must escalate. 60% of the time, the repair department determines that something was not written correctly on the Order Re-write (written by an SBC/AT&T rep, see below). In this case, we must call the LLC, have them write a correcting order which authorizes the repair department to make the original changes that were specified on the "completed" order.

8. When we submit an order through SBC/AT&T's web-based system (LEX), an SBC rep re-writes the order and sends it the technicians to complete. As stated above, in about 40% of the case, SBC/AT&T's order processors re-write the orders incorrectly, resulting in the order not being worked properly.

9. We believe that, in light of SBC/AT&T's significant failures and errors, in no event should TMC be subject to this Commission's compulsory process, since we have worked diligently, within our company and with SBC/AT&T, to effect the full transition of our UNE-P services to resale. In any event, given the problems we have experienced with SBC/AT&T's performance, we are skeptical that SBC/AT&T could effect the required transition by the 3/11/06 deadline, even if TMC were to submit valid orders for all of its customers by that time. Thus, a Commission injunction requiring us to submit such orders would have no effect on the pace of the transition.

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BY

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February 24, 2006

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I. Introduction and Summary

At a time when it should be concentrating on working the thousands of orders that CLECs are generating to accommodate the elimination of the unbundled network element ("UNE") platform ("UNE-P"), and when the CLECs that have used UNE-P are completely overwhelmed in managing the transition away from the platform, SBC is needlessly imposing on the CLECs' resources to respond to a pointless so-called "Emergency" Motion seeking this Commission's intervention in the process. In lodging this Motion, SBC has unfairly shaded and, in many cases, outright misrepresented the CLECs' activities in meeting the FCC's mandate to transition off of UNE-P. Further, and fatal to the relief SBC is requesting, SBC has itself failed to undertake the actions necessary for the transition away from UNE-P to be undertaken smoothly. SBC's own failures and errors in managing the transition have as much to do with CLECs' ability to complete the transition by the FCC's deadline of March 11, 2006, as does any action on the CLECs' part. Given SBC's lack of preparation for this long-anticipated transition, the only intervention that this Commission should undertake is a direction *to SBC* that it improve its flawed processes and cease attempting to place blame on CLECs for its own failings.

Thus, Call America, Inc., Curatel, LLC, DMR Communications, Inc., TCAST Communications, Inc., and Tri-M Communications, Inc. d/b/a TMC Communications ("Small CLECs") respectfully oppose SBC's Motion and request that the Commission focus its energy and attention on SBC's flawed processes, rather than

on the Small CLECs' valiant efforts to manage the transition away from reliance on the UNE Platform.

II. SBC is Not Entitled to the Equitable Relief it is Seeking

By seeking an order requiring the CLECs to undertake actions that, SBC alleges, they are not undertaking, SBC is invoking the equitable jurisdiction of this Commission. It is a fundamental principle of equity that a party may not invoke equitable relief if it comes with "unclean hands."¹ SBC's "unclean hands" in the matter of the transition away from the UNE Platform comes in several forms. First, and most pertinent, it has completely distorted, misrepresented and, in certain cases, simply prevaricated regarding the Small CLECs' response to SBC's various demands that they submit "acceptable" transition plans. Second, in response to many CLECs' orders and requests regarding the transition, SBC has not maintained its ordering systems properly so that CLECs can obtain the necessary information to submit valid orders, has not worked those orders properly once submitted, and

¹ "The general principle guiding actions in equity is that those seeking equity must come with clean hands." D.88-11-051; "The defense of unclean hands arises from the maxim, 'He who comes into Equity must come with clean hands.' (*Blain v. Doctor's Co.* (1990) 222 Cal. App. 3d 1048, 1059 [272 Cal. Rptr. 250] (Blain).) The doctrine demands that a plaintiff act fairly in the matter for which [**749] he seeks a remedy. He must come into court with clean hands, and keep them clean, or he will be denied relief, regardless of the merits of his claim. (*Precision Co. v. Automotive Co.* (1945) 324 U.S. 806, 814-815 [65 S. Ct. 993, 997-998, 89 L. Ed. 1381]; *Hall v. Wright* (9th Cir. 1957) 240 F.2d 787, 794-795.) . . . The doctrine promotes justice by making a plaintiff answer for his own misconduct in the action. It prevents 'a wrongdoer from enjoying the fruits of his transgression.' (*Precision Co. v. Automotive Co.*, *supra*, 324 U.S. at 815 [65 S. Ct. at p. 998]; *Keystone Co. v. Excavator Co.* (1933) 290 U.S. 240, 245 [54 S. Ct. 146, 147-148, 78 L. Ed. 293].)" *Kendall-Jackson Winery, Ltd. v. Superior Court*, 76 Cal. App. 4th 970; 90 Cal. Rptr. 2d 743, 748-749 (Ct. App. 1999).

has undertaken various other inappropriate actions that have delayed CLECs in their efforts to effect the transition. Third, by failing timely to seek and obtain amendments to the CLECs' interconnection agreements ("ICAs") to effectuate the FCC's mandated elimination of UNE-P, SBC "froze" the CLECs, who understandably did not wish to submit transition orders until the rules that would apply to those orders, including any applicable charges, were set. As the Commission is well aware, the terms and conditions under which the CLECs were to manage the transition were not set until this Commission's issuance of D.06-01-043 on January 26, 2006. Finally, SBC's action in filing the Motion is diverting CLECs' time, attention and resources to dealing with the Motion, rather than completing their transition plans. To this extent, a significant part of the problem to which SBC points is, truly, of its own creation.

Finally, the amendment to the CLECs' ICAs that the Commission did approve provide that, as of March 11, 2006, SBC is empowered to charge Total Service Resale rates for any lines for which it has not received transition orders.

Amendment Section 2.1.3.4. Accordingly, SBC will not suffer any financial harm, even if the CLECs fail or refuse to submit timely orders for transition. Any other harm SBC may have alleged – such as the *potential* that its ordering systems may crash under a crush of last-minute transition orders – is not irreparable, either as to SBC or its carrier customers. Since a premise for the granting of injunctive relief is the existence of irreparable harm (Cal. Civ. Proc. Code § 526(a)(2)), SBC is not entitled to the injunctive relief it requests. This is, perhaps, the most important

reason why the Commission should decline to take any action in response to SBC's Motion: SBC will receive the same revenue, whether or not CLECs submit transition orders in a timely fashion.

Further bolstering the conclusion that SBC is not entitled to the relief it is requesting is the well-established rule of equity that equity will not require a party to undertake a useless act.

"Equity will not interpose its remedial power in the accomplishment of what seemingly would be nothing but an idly and expensively futile act, nor will it purposely speculate in a field where there has been no proof as to what beneficial purpose may be subserved through its intervention."

Leonard v. Bank of America, 16 Cal.App.2d 341, 344 (Cal. App. 1936)²

If SBC receives the same revenue whether or not CLECs submit transition orders, a Commission order requiring CLECs to submit such orders more or less defines a "useless act."

The Small CLECs do not want to be misunderstood: they agree that the recently-promulgated amendment to the ICAs require them to submit transition orders by the March 11, 2006 deadline, and they fully intend to do so, insofar as that is possible, given SBC's own failures and errors. There is, however, simply no basis, given SBC's failures and errors, for the Commission to come down on one side or the other in this matter. The transition of over a million lines off of the UNE Platform is, by SBC's admission, 90% complete. "Declaration of Roman Smith on

² See *Jessen v. Keystone Savings and Loan*, 142 Cal. App. 3d 454, 457; 191 Cal. Rptr. 104 (Cal. App. 1983).

behalf of SBC California" ("Smith Decl.") at ¶ 11. CLECs have plans to submit orders to move the remainder of those UNE-P lines in the next two weeks. Because the CLECs' ICAs permit SBC, on March 11, 2006, to re-price any remaining circuits to the prices applicable to Total Service Resale lines, SBC will suffer no financial harm.³ Under these circumstances, the only Commission intervention that would be justified would be an order to SBC to concentrate on accurately and timely working the orders it receives, rather than wasting the CLECs' and the Commission's time and resources on frivolous motions for injunctive relief.

A. SBC Has Misrepresented the Small CLECs' Response to Their UNE-P Transition Obligations

The confidential Declarations attached to this Opposition demonstrate that, by and large, SBC has misrepresented the Small CLECs' response to their obligation to effect a transition of their UNE-P lines to alternative arrangements. Because the facts are somewhat different as to each carrier, we present the pertinent facts by individual carrier, below. Suffice it to say that most CLECs have submitted

³ The Commission should take note of SBC's argument that Total Service Resale prices are "below-market." Emergency Motion of SBC California to Compel UNE-P Transition ("Motion") at ¶ 9. This shows that SBC refuses to accept the requirements of the Telecom Act and this Commission's rules implementing that it does not like, such as the resale rates that this Commission set in D.97-04-090. Both the Telecom Act and D.97-04-090 (which was on reconsideration of the interim resale rates set in D.96-03-020) have determined that those rates are cost-justified and fully compensatory to SBC. SBC's spurious claim that those rates are "below-market" illustrates its "heads I win, tails you lose" approach to implementing unfavorable regulatory decisions.

transition plans to SBC and are well along in their implementation of those plans. In no instance have any of the Small CLECs “refused” to submit transition plans. In fact, in at least one case, a carrier was explicitly told that its plan was acceptable, only to discover that it is an object of SBC’s Motion for injunctive relief. In short, the facts show that there is no “Emergency” here, and the Commission should so find.

TCAST Communications

TCAST submitted its transition plan in January of 2006, when the arbitration of issues raised by the FCC’s *Triennial Review Order* (“TRO”) and *Triennial Review Remand Order* (“TRRO”) was near completion. Declaration of Ed Smart on Behalf of TCAST Communications (“Smart Decl.”) at ¶ 3 and Exhibit 1. It informed SBC that it planned to move all its UNE-P lines to resale, and specified a daily rate of submitting orders. When, after the filing of SBC’s “Emergency Motion,” TCAST complained to its SBC Account Manager that it had filed a transition plan and received no indication of a problem with it, the Account Manager sent an e-mail to TCAST stating that it had been placed on the list of target CLECs in error. Smart Decl. at ¶ 4 and Exhibit 2.

Soon thereafter, the Account Manager explained that his earlier e-mail had, itself, been in error, and that TCAST’s pace of submitting transition orders was inadequate to meet the deadline. The arithmetic underlying the “analysis” in this e-mail was manifestly incorrect. Smart Decl. at ¶ 5 and Exhibit 3.

As of today, TCAST has submitted orders to move over two-thirds of its UNE-P lines to resale. It can easily complete the task of moving the remaining one-third by following its transition plan's specification of submitting a certain number of orders per day.

In short, TCAST has met SBC's demand for a transition plan, is timely submitting transition orders, and will complete its transition by the deadline. SBC's Motion and supporting Declaration are completely inaccurate in claiming that TCAST is inadequately adhering to an acceptable transition plan.

DMR Communications

DMR submitted its transition plan in January of 2006, when the SBC *TRO/TRRO* arbitration was near completion. Declaration of David Lee on behalf of DMR Communications ("Lee Decl.") at ¶ 3. DMR is moving about two-thirds of its customers to its own switch, and the remaining one-third to resale. *Idem*. Unfortunately, SBC has delayed DMR's transition to facilities-based service by at first refusing to honor DMR's orders for interconnection trunks, by slow performance in providing collocation arrangements, and other unjustified rejections of transition orders. Lee Decl. at ¶¶ 4, 5. These problems will be discussed further in Section II.B.1, below. There is no question that DMR will be able to submit orders for the timely transition of one-third of its lines to resale. As with other carriers that are moving to facilities-based service, however, SBC's own failures and errors have made it impossible for DMR to submit timely orders for the transition of the remaining two-thirds of its lines.

TMC Communications

TMC recently submitted its transition plan, which entails moving its very few UNE-P lines to resale. Declaration of Jewel Bridgers on behalf of TMC Communications ("Bridgers Decl.") at ¶ 3. By submitting orders for one-tenth of its lines each day between now and March 10, TMC will complete its transition in a timely manner – assuming SBC does not erroneously reject those orders and delay the working of those orders past the deadline. Bridges Decl. at ¶ 3, 9.

Call America

As long ago as November of 2005, Call America submitted its transition plan, which involves moving most of its UNE-P lines to its own switch. Declaration of Jeffrey Buckingham on behalf of Call America, Inc. ("Buckingham Decl.") at ¶ 3. Unfortunately, SBC slow-rolled the order for a collocation cage in SBC's San Luis Obispo central office ("CO") that Call America's corporate parent, Utility Telephone, Inc. ("UTI") submitted. Buckingham Decl. at ¶ 5. Since the overwhelming majority of Call America's customers are served by that central office, SBC's delay in providing collocation has made it impossible for Call America to complete its transition off of UNE-P by the deadline. Call America has experienced a variety of other SBC-caused problems that have further impeded Call America's ability to meet the deadline. Buckingham Decl. at ¶¶ 6-12. We will discuss these SBC-caused problems further below in Section II.B.1.

Call America recognized, as of November, 2005, that it was going to have problems completing its transition in a timely manner and began asking SBC for an

extension of the deadline. Buckingham Decl. at ¶ 3. Despite that request, and its reiteration several times more recently, SBC has consistently and unreasonably refused to grant Call America an extension. Buckingham Decl. at ¶ 13. Although Call America is making every effort to place as many transition orders as is possible before March 11, 2006, SBC's failures and errors will make it possible for Call America to complete its transition. The Commission should require SBC to work cooperatively with Call America to determine a reasonable time by which it can have its remaining UNE-P lines transitioned to its own facilities.

Curatel

Curatel submitted its transition plan – which involves moving all of its UNE-P lines to SBC's Local Wholesale Complete ("LWC") commercial arrangement – in October of 2005. Declaration of Daniel Margolis on behalf of Curatel, LLC. ("Margolis Decl.") at ¶ 3. Since October of 2005, Curatel has been attempting to negotiate an acceptable version of SBC's LWC replacement for UNE-P, but has not, to date, been successful. Margolis Decl. at ¶ 4. By submitting orders for one-tenth of its remaining UNE-P lines per day to be migrated to resale service, Curatel can complete the transition by the March 11 deadline. Margolis Decl. at ¶ 3. Since SBC can begin charging Curatel resale rates for those lines on March 11, whether or not Curatel completes its submission of transition orders, SBC will experience no financial harm if, for some reason, Curatel fails to finish submitting the required orders by March 11.

* * * * *

In summary, it is literally untrue that any of the small CLECs have “refused” to submit transition plans. All have now done so. Further, all are “following through” (Motion at ¶ 8) on those plans, insofar as SBC’s failures and errors have permitted them to do so. For the carriers that are moving to facilities-based service, SBC has refused to grant requested extensions, even though it is SBC’s own actions that have made it impossible for the carrier to meet the deadline. This places SBC in equal responsibility for any failure to meet the deadline that may yet occur. Under these circumstances, therefore, SBC comes to the Commission with “unclean hands” and does not qualify for the equitable relief it is seeking. Since SBC is empowered by its ICAs with the CLECs to charge resale rates for any UNE-P lines for which it has not received transition orders, as of March 11, 2006, it will suffer no harm as a result. Therefore since equity does not require the doing of a “useless act,” there is no basis for granting SBC’s request for a Commission order requiring the CLECs to submit transition orders for all UNE-P lines by March 11.

B. SBC’s Own Actions Have Made it Impossible for CLECs to Meet the Deadline for Migrating Their UNE-P Lines to Alternative Arrangements.

Small CLECs have differing plans for their future local exchange operations. Curatel, TCAST and TMC simply plan to migrate their UNE-P lines to resale. Call America and DMR are undertaking heroic efforts to move most or all of their

UNE-P lines to UNE-L.⁴ All of the carriers have faced roadblocks that SBC has constructed, but obviously there have been more opportunities for SBC to impede Call America's and DMR's plans for deploying their own switches. Whatever their transition plan, the CLECs are not solely responsible for any failure to move more quickly in implementing their plans. SBC has played a crucial and negative role in causing the small CLECs, potentially, to miss the March 11 deadline. Under these circumstances, the Commission should not intervene. If it does, it should intervene to require SBC to work more closely with the smallest carriers and to assist them in completing their transition plans. For DMR and Call America, if the Commission does take action, it should be to order SBC to cease unreasonably refusing to grant the CLECs an extension of the deadline. The carriers understand that the UNE-P lines remaining in service on March 11 will be re-priced to resale rates. In light of SBC's failures and errors, they simply need more time to complete the transition to UNE-L in which they are engaged.⁵

1. SBC's failures and omissions have made it impossible for Call America and DMR to meet the March 11 deadline.

As outlined in the attached Declarations, SBC has been largely responsible for the lack of progress of CLECs who are migrating their lines to UNE-L. SBC

⁴ "UNE-L" entails the provision of service through the use of a UNE loop ordered from SBC, while providing switching services through a carrier's own or leased facilities.

⁵ For the remaining carriers – Curatel, TCAST and TMC – SBC will be receiving resale rates for their UNE-P lines, as of March 11. There is, thus, no need for Commission intervention of any kind in their cases.

slow-rolled the collocation order submitted by Call America's corporate parent, placing Call America's entire transition plan in jeopardy. Buckingham Decl. at ¶ 5. This delay was so decisive that, when Call America submitted its transition plan in November of 2005, it noted that it would no longer be possible to meet the deadline, and requested an extension. *Idem*. SBC continues unreasonably to deny the requested extension. Buckingham Decl. at ¶ 13.

Once Call America's collocation space was delivered, SBC installed T-1 cross-connects incorrectly. Buckingham Decl. at ¶ 6. This resulted in many delays. Further, at least half of the DS-1 or T-1 circuits that SBC has connected to Call America's network have had serious repair problems, and SBC has been extremely slow in addressing these repeated repair problems. Buckingham Decl. at ¶ 8-9. All of these problems have diverted essential personnel from progressing through Call America's inventory of lines and required them to re-address, repeatedly, the same lines for which transition orders had already been placed. Buckingham Decl. at ¶ 9. In addition, SBC's failure – despite repeated requests – to maintain a proper temperature in its San Luis Obispo CO caused multiple equipment failures in Call America equipment installed in its parent company's collocation cage. Buckingham Decl. at ¶ 7.

In addition, SBC has delayed, or delivered with severe repair problems, a number of loops that, Call America informed SBC, would be used for the provision of xDSL service. These delays and repairs have imposed considerable expense on Call America, and they have further set back the carrier's transition plans.

Whenever SBC delivers defective loops or delays the delivery of loops, it causes a cascade of further delays, because the delivery of a loop is only the first step in a multi-step process for moving a customer from UNE-P to UNE-L. The delays – and the consequent need for CLEC personnel to divert attention to SBC's actions, rather than "next steps" in the transition process – have resulted not only from the technical failures described above, but also from the actions of poorly-trained SBC order processors. Buckingham Decl. at ¶ 11.

Finally, SBC has contributed to delay by apparently giving notice of Call America's number-porting orders to SBC's marketing department, in violation of this Commission's rules. It is too coincidental that Call America customers have received win-back calls and visits from SBC's sales representatives right after Call America has submitted number-porting orders. There is no way this could be happening unless SBC were inappropriately sharing confidential information obtained from Call America orders with SBC sales reps. Whenever these sales calls occur, moreover, Call America has to spend time reassuring customers that it can continue to provide service. Moreover, it would appear that SBC sales reps have, at a minimum, suggested that the service problems that have resulted from SBC's actions are the fault of Call America. All of this has forced Call America to divert scarce resources from managing the transition to reassuring and correctly informing Call America customers about the nature of the problems and delays they have experienced when Call America attempts to move them from UNE-P to UNE-L. Buckingham Decl. at ¶ 12.

DMR will also be unable to complete its transition to UNE-L provision of service to its customers because of SBC's failures and errors. Although DMR ordered its local interconnection trunks ("LITs") timely in January of this year, SBC erroneously and repeatedly rejected its orders. Only after the intervention of DMR's counsel – and a full month after DMR first submitted its LIT orders – did SBC provide a firm-order confirmation of the orders to DMR. Since, however, SBC takes a full thirty business days to deliver LITs, DMR will have no connectivity from its switch to the public switched network on March 11, 2006. Declaration of David Lee on behalf of DMR Communications ("Lee Decl.") at ¶ 4. It will, therefore, be impossible for DMR to meet the transition deadline. In addition, SBC has only recently provided DMR with the connectivity necessary for it to submit resale orders, as an interim step towards moving DMR's lines to UNE-L. Although DMR will make every effort to submit the necessary orders per day to move the lines to resale (Lee Decl. at ¶ 3), its unfamiliarity with resale ordering procedures may result in rejected orders that will cause it to fall afoul of the March 11 deadline. Lee Decl. at ¶ 5.

2. SBC's Actions Have Also Impeded the Migration Plans of Carriers Transitioning to Resale.

TMC has discovered that many of its customers' order records are "not found" in SBC's ordering systems. In the past, TMC managers were able to type in a customer's telephone number and extract a complete order history from SBC's ordering system. Now, about 70% of the time, this process results in an "account

not found" notation being returned. Declaration of Jewel W. Bridgers on behalf of TMC Communications ("Bridgers Decl.") at ¶ 4. This is especially true for orders placed in 2004 or earlier. In fact, when TMC managers contact SBC's service representatives, they find that SBC reps themselves cannot find records on customers placed in service before 2005. Bridgers Decl. at ¶ 5. This places a severe impediment to TMC placing transition orders. As do the other CLECs, TMC also finds a very high rate of erroneous order rejection. It also finds that SBC takes the full four hours allowed it to reject orders. Because of that, two corrected orders may be submitted in a single day without TMC receiving a firm order confirmation. Obviously, this considerably slows the transition process. Bridgers Decl. at ¶ 6.

TMC also has a high rate (about 40%) of erroneous completion notices. When TMC receives an inaccurate completion notice, it is forced to go to the repair department, which often determines that the order was simply not completed – rather than requiring repair. The back-and-forth between SBC service reps eats up precious time needed to complete the submission of transition orders. Bridgers Decl. at ¶ 7.

Finally, when TMC uses SBC's web-based LEX system for submitting orders, SBC service reps re-type them, inserting errors in otherwise-correct orders. This results in further delay while TMC endures the process of order rejection, order re-submission and, often an additional rejection of orders into which errors are re-

introduced by SBC personnel. Bridgers Decl. at ¶ 8. Obviously, all of this contributes to delay.

SBC's actions have also delayed TCAST and Curatel in implementing their transition plans. TCAST has had to divert personnel from managing its transition to resale to respond to frequent inquiries and demands for information regarding its transition plans, as well as to dealing with SBC's "Emergency Motion" that is the subject of this Opposition. Smart Decl. at ¶¶ 4-5.

Curatel has been attempting, since November of 2005, to negotiate a "commercial" agreement to replace its UNE-P lines with SBC's Local Wholesale Complete ("LWC") offering. SBC's unreasonable and inflexible positions in those negotiations have resulted in unexpected delay, such that Curatel will now be obliged to submit unanticipated resale orders because it will not have the LWC arrangements in place by March 11.

* * * * *

In sum, SBC does not come to the Commission with "clean hands" in its request for an order requiring the Small CLECs to submit their transition orders by March 11, 2006. Much of the delay the Small CLECs have experienced has resulted from SBC's failures and errors, as described above. Under these circumstances, there is no basis for the Commission – acting as an equity tribunal – to grant SBC its requested relief. The Commission should summarily reject SBC's untimely and unreasonable Motion. If the Commission gets involved at all, it should issue an order (1) that SBC work more closely with the smaller

CLECs to assist in completing their transitions and (2) requiring SBC to grant extensions to carriers like Call America and DMR, that have been working diligently, despite SBC failures and errors, to complete their transitions from UNE-P to UNE-L.

C. SBC's Failure to Seek Timely Arbitration of the Terms of the Transition Away from the UNE Platform Contributed to the Small CLECs' Inability to Meet the March 11 Deadline.

SBC makes much of the fact that the CLECs had twelve months in which to complete their transition away from reliance on the UNE Platform. Motion at ¶ 1. The fact is, however, that SBC had the same period of time to do the things that it needed to do to ensure a smooth transition. Chief among these was the initiation and completion of the arbitration in whose docket this Opposition is being filed. Despite knowing since at least August of 2004 that this transition was coming, SBC waited until almost August of 2005 (July 28, to be exact) to file its arbitration petition. SBC has participated in a number of major Telecom Act arbitrations and well knows how difficult and time-consuming they are. By waiting until, effectively, August of 2005, SBC well knew that the arbitration would not likely be completed – or would only just be completed – prior to the March 11, 2006 deadline for CLECs to leave the UNE Platform. In fact, the Administrative Law Judge assigned to this case was extremely conscientious and put the parties through a grueling schedule of pleadings and due dates that resulted in a final Commission decision at the end of January – a mere six months for completing

what the Telecom Act normally allows nine months to finish. 47 U.S.C. § 252(b)(4)(C).

SBC knew or should have known that the arbitration would deal with the questions of rates applicable when CLECs transition from UNE-P to UNE-L or from UNE-P to resale, and what would happen in the event a CLEC fails to submit orders by the March 11 deadline for the migration of its UNE-P lines. It certainly knew or should have known that CLECs would be reluctant to submit orders when the charges applicable to those orders and the consequences for failing to submit such orders were fully known. Thus, it knew or should have known that its delay, until nearly August of 2005, in filing an arbitration petition to settle those issues (among others) would effectively "freeze" a certain number of CLECs while they waited for those issues to be clarified.

As the Commission is well aware, those issues were not resolved until this Commission issued D.06-01-043 on January 26, 2006. Prior to that date, moreover, SBC was imposing so-called "conversion charges" in the range of \$50 per line on some carriers that were submitting transition orders. Knowing that the CLECs were seeking to eliminate such illegal charges from the *TRO/TRRO* amendment, several CLECs suspended their order submission so as to avoid the illegal conversion charges.

Thus, SBC's twin actions of delaying the filing of its arbitration petition while imposing illegal conversion charges on some carriers who were submitting orders created the very situation that SBC now decries: CLECs were holding off on the

submission of orders because they reasonably wanted to have a legal treatment of them, rather than SBC's unilateral and illegal treatment.

Again, this demonstrates how SBC comes to the Commission's equity jurisdiction with "unclean hands." In large part, it has caused whatever problems it now foresees from CLECs' failure to submit sufficient transition orders before now. Under these circumstances, this is yet another, independent basis in equity for the Commission to deny SBC the equitable remedy (an order in the nature of an injunction) that it now seeks.

D. SBC's Filing of the so-called "Emergency Motion" Has Further Diverted the Small CLECs' Time and Resources From Managing Their Transitions Off of the UNE Platform.

Finally, as should be obvious, carriers as small as the ones filing this Opposition do not have the resources simultaneously to (1) conduct their normal business operations, (2) manage the expensive and time-intensive process of moving all their lines off of UNE-P, and (3) respond to a legal filing such as SBC's "Emergency Motion." Each of the Small CLECs had to devote top-level managers' time to understanding what SBC is asking the Commission to do in its "Emergency Motion," developing the Declarations that accompany this Opposition, and conferring with counsel about the steps they should take in response to the Motion. Some of these carriers have very small staffs, and the need to respond to a pleading that is so rife with inaccuracies and misleading assertions was extremely distracting, time-intensive and, ultimately, expensive.

Rather than diverting the time and attention of the top executives of the Small CLECs to responding to this Motion, SBC should have instead been offering its assistance to the targeted CLECs and clearing roadblocks *of its own making* that are impeding the CLECs in implementing their transition plans. Thus, the very filing of the instant Motion demonstrates yet another independent basis for denying it: to steal an analogy from property law, if I push you onto my property, I cannot sue you for trespass!

E. SBC's Motion Fails To Meet the Standards for Issuance of an Injunction.

The California Code of Civil Procedure describes the circumstances under which a court of equity can grant an injunction.⁶ Effectively, a movant must prove that it is subject to irreparable harm and the balance of hardships among the parties weighs in favor of granting the injunction. *See Jessen v. Keystone Savings and*

⁶ "a) An injunction may be granted in the following cases:

(1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.

(2) When it appears by the complaint or affidavits that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury, to a party to the action.

(3) When it appears, during the litigation, that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual.

(4) When pecuniary compensation would not afford adequate relief.

(5) Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief.

(6) Where the restraint is necessary to prevent a multiplicity of judicial proceedings.

(7) Where the obligation arises from a trust."

Cal. Code of Civ. Proc. § 526(a)

Loan Ass'n, 142 Cal. App. 3d 454; 191 Cal. Rptr. 104 (Ct. App. 1983). The Small CLECs demonstrate above that SBC will experience *no* harm – much less irreparable harm – if the Commission fails to order the CLECs to submit orders to transition all of their UNE-P lines by March 11. SBC will receive the same revenue, whether or not those orders are submitted, pursuant to Section 2.1.3.4 of the ICA amendment that this Commission approved in D.06-01-043. Moreover, given their small staffs and limited resources (especially as compared with SBC's huge staffs and seemingly unlimited regulatory resources), the balance of hardships weighs decidedly in favor of the CLECs.

Also relevant here are the principles of equity discussed above. An agency with equity jurisdiction cannot grant equitable relief (the order in the nature of an injunction sought in the Emergency Motion) if the plaintiff comes to the agency with "unclean hands." *See* n. 1, above. The Small CLECs demonstrate in detail above how unclean are SBC's hands in the matter of the UNE-P transition. And, finally, equity will not require the undertaking of a useless act. *See* n. 2, above, and associated text.

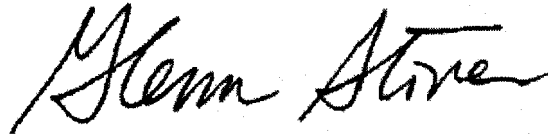
III. Summary and Conclusions

SBC has filed an "Emergency Motion," but there is no "emergency." Although the CLECs acknowledge that they are under an obligation to submit orders for the transition of their UNE-P lines to alternative arrangements, there is no "great harm" (Cal. Civ. Proc. Code § 526(a)) to SBC if SBC does not have in hand, on March 11, 2006, orders for the transition of 100% of the UNE-P lines it now

provides. It admits that it has received orders for over 90% of those lines already. The Declarations accompanying this Opposition demonstrate that the Small CLECs have all submitted transition plans to SBC. Most have submitted a large number of transition orders to SBC, and the rest are rapidly submitting orders over the next two weeks. SBC is permitted, under the ICA amendment this Commission approved in D.06-01-042, to re-price any lines for which it does not receive migration orders at Total Service Resale rates, which is the most it could expect to derive from those lines if provided to a CLEC customer. In short, the situation described in SBC's Motion does not constitute an "emergency" of any kind.

More pertinent to the legal issues the Motion raises, SBC comes to the Commission with "unclean hands." Much of the delay in securing CLEC migration orders is due to SBC's own actions, failures and errors, including defective ordering systems, poor management of those systems, incorrect execution of orders received, erroneous order rejections, the installation of defective circuits in response to orders, and delays in collocation provisioning. SBC also has "unclean hands" because it delayed filing its arbitration petition until nearly August of 2005 –well beyond the date necessary to get a timely arbitration result under the Telecom Act's 9-month time frame – and because SBC has been imposing illegal "conversion charges" on some carriers. Finally, rather than work with the CLECs to assist those that are having the problems described in this Opposition and the accompanying Declarations, SBC instead filed the instant "Emergency Motion,"

Respectfully submitted,

A handwritten signature in black ink that reads "Glenn Stover". The signature is fluid and cursive, with the first name "Glenn" and last name "Stover" clearly distinguishable.

Glenn Stover

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TCAST Communications, Inc. and
Tri-M Communications, Inc. d/b/a
TMC Communications**

**BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Pacific Bell Telephone
Company, d/b/a SBC California for
Generic Proceeding to Implement Changes
in Federal Unbundling Rules Under
Sections 251 and 252 of the
Telecommunications Act of 1996

Application 05-07-024
(Filed July 28, 2005)

REDACTED (PUBLIC) VERSION OF

**DECLARATION OF
JEFFREY BUCKINGHAM, PRESIDENT
CALL AMERICA, INC.
IN SUPPORT OF
OPPOSITION TO "EMERGENCY" MOTION UNDER SEAL
BY**

**CALL AMERICA, INC. (U-6598-C),
CURATEL, LLC (U 6610 C),
DMR COMMUNICATIONS, INC. (U 6735 C),
TCAST COMMUNICATIONS, INC. (U-5633-C), AND
TRI-M COMMUNICATIONS, INC. D/B/A TMC COMMUNICATIONS (U-5928-C)**

**[REDACTED INFORMATION INDICATED ON THE FOLLOWING PAGES WITH THE
SYMBOL: (* * *)]**

**DECLARATION OF
JEFFREY BUCKINGHAM, PRESIDENT
CALL AMERICA, INC.**

1. My name is Jeffrey Buckingham and I swear the following, subject to penalty for perjury. I am President of Call America, Inc., a CLEC that is a subsidiary of Utility Telephone, Inc. ("UTI"). I have been an executive in the telephone industry since 1983, when I started a firm, also called Call America, that competed in the long distance market in California. In 1997, I sold Call America to GST Telecom, which subsequently declared bankruptcy in 2000. In 2001, I founded the current Call America company and, in August of that year, applied for a Certificate of Public Convenience and Necessity from the California Public Utilities Commission ("Commission"). The Commission issued our Certificate at the end of November, 2001, and we commenced operations shortly thereafter. In June of 2005, I sold a majority interest in Call America to UTI, which is a facilities-based CLEC that also holds a Certificate from the Commission.

2. Call America serves approximately * * * customers with just under * * * lines. Most of our customers are in the vicinity of San Luis Obispo, our headquarters location. Until the past year, Call America served its customers primarily through the unbundled network element ("UNE") platform ("UNE-P"). Part of our motivation for merging with UTI was the fact that UTI had facilities that Call America lacked, and that Call America did not have access to sufficient capital to shift from UNE-P to facilities-based service. A significant part of Call America's transition plan to facilities-based service involves sharing infrastructure with UTI. For example, Call America will share UTI's collocation cages in several SBC/AT&T central offices.

3. In November of 2005, after SBC/AT&T demanded the submission of a "transition plan" to move Call America's customers off of the UNE Platform, Call America submitted the plan that is attached as Exhibit 1 to this Declaration. Due to our lack of resources and personnel, we knew in November of 2005 that it would be difficult for Call America to have all of its customers moved onto Call America's own or UTI's shared facilities. We began more or less immediately to discuss with SBC/AT&T whether Call America could obtain an extension of the March 11, 2006 deadline for completing our transition. At no time has SBC/AT&T been willing to offer us such an extension, even though, as shown below, many failures and errors by SBC/AT&T have contributed to major delays in our ability to move customers and lines to our own facilities.

4. The process of moving thousands of customer lines to new technology is very complex. It requires experienced staff and many long hours. It is not a process that can be automated: each account has to be "touched" by human hands several times and any delays cause more delays in a chain reaction. Call America will

continue to work hard to move all eligible customers to our switch but, due to SBC/AT&T's errors and failures described below, the process is taking longer than expected.

5. By far the longest delay we experienced was SBC/AT&T's delay in delivering to UTI's control a collocation cage in the San Luis Obispo central office. Originally the collocation was to be turned over to us in April, 2005. At an early point in the process, UTI ordered a minor change in the power feed for the cage; SBC/AT&T took an additional 3 months past April, 2005, to turn over the cage. We observed that, during most of that time, SBC/AT&T did no work on the cage, undertaking most of it just a few days before the revised due date for handover. Before and during the three-month delay, UTI asked several times for SBC/AT&T to expedite the work – citing the 3/11/06 deadline for transitioning off of UNE-P – but SBC/AT&T failed or refused to honor UTI's requests that the work be expedited. As a result, work that was to have begun in April, 2005, to begin moving Call America customers' lines to a joint UTI-Call America switching platform was delayed until July of 2005. This loss of three months' time – apart from the additional delays discussed below – made it virtually impossible to meet the 3/11/06 deadline.

6. When the joint UTI-Call America switching platform was finally installed in San Luis Obispo, SBC/AT&T labeled a large number of the T-1 cross connects in SBC/AT&T's section of the central office incorrectly. Call America and UTI installed the cross connects in the collocation cage *per* the industry standard. Eventually this issue was resolved by changing the standard to meet what SBC had labeled but, during the first few weeks of UTI-Call America's occupation of the collocation cage, there were many delayed installations because the T-1s were not plugged into the correct port.

7. Another SBC/AT&T failure that has caused delays in Call America's transition away from UNE-P inheres in SBC/AT&T's management of the San Luis Obispo central office ("CO"). That CO is consistently 4-5 degrees hotter than the other central offices where UTI has equipment. When we first installed equipment in our cage, the temperature was regularly 82 to 85 degrees. After UTI alerted SBC/AT&T to this problem, the temperature was lowered for a few days, but SBC/AT&T permitted it to rise again after a few days. Running equipment at high temperature has caused 3 power supplies to fail; it has also contributed to other intermittent equipment problems that slow the transition of customers. Recently, UTI undertook a renewed effort to convince SBC/AT&T to lower the temperature in the vicinity of UTI's collocation cage. During this process, an SBC/AT&T employee refused to open a trouble ticket and suggested that UTI contact the "old" AT&T, which owned the building in which the CO is located, to address the temperature issue. Eventually, SBC/AT&T lowered the temperature to meet the NEBS standards, which are a maximum of 80 degrees at a point 5 feet above the ground

and 18 inches in front of the equipment bay. The temperature in the CO now runs consistently about 76 degrees, which is still 4 degrees hotter than other central offices in which UTI maintains collocation cages.

8. UTI and Call America use T-1 circuits to connect many customers to their joint switching platform, and all have to be ordered through SBC/AT&T. SBC/AT&T has been late in turning up these T-1s, or they have turned them up with serious repair problems in at least half of the circuits. These provisioning delays have caused Call America serious workflow disruption and have resulted in major delays in moving our customers to our switch. We were informed by a tester in the San Ramon PCO office at SBC/AT&T that some T-1 delays have been caused by SBC/AT&T's workload and that SBC/AT&T has only 2 technicians available to install our T-1 circuits in the area. The same office at SBC/AT&T informed us that it had finally deployed an additional technician in January 2006. The latest SBC/AT&T T-1 circuit installation delays are caused by cable placement which we have not been able to validate. Several staff members at the Local Operations Center have also informed us that some T-1 circuits have been delayed due to weather-related trouble tickets. SBC/AT&T personnel have informed us that the number of technicians in the area has been reduced due to cost-cutting so, when bad weather occurs, new installations are delayed and employees are put on forced overtime to catch up.

9. SBC/AT&T has delivered many T-1s with repair problems that do not show up in the first few days of acceptance, but that retard or stop the process of moving our customers to our switch. Approximately 20% of the circuits we have ordered have required repair before being placed in service by Call America, resulting in a delay of their planned installation date. These delays, in turn, make it impossible for Call America to port the customers' numbers on the original schedule. As a result, Call America staff has had to re-write orders for porting the telephone numbers. The repair problems with delivered T-1 circuits also have taken valuable time away from the process of moving customers, as we are obliged to call technicians out again and again to repair defective T-1s.

10. SBC/AT&T has also delayed, or delivered with repair problems, a number of copper loops we have ordered to provide xDSL services to our customers. Even though we were quite clear as to the intended use of these loops, SBC/AT&T has nonetheless often delivered them with bridge taps, which SBC/AT&T well knows will interfere with the operation of our xDSL service. In many cases, we have had to order a new loop, causing further delay. In some cases, we have had to order a DS-1 loop, at considerably higher expense, to be sure that the circuit will serve our customer acceptably. This has caused additional delays and expense to move customers onto our switch.

11. Call America is also experiencing serious delays and customer outages due to lack of experience and training on the part of SBC/AT&T's order processors. One typical scenario is as follows: a customer has a circuit due to be installed. Call America has written the necessary orders to port the customer's numbers according to the schedule for installation of the circuit. When/if SBC/AT&T delays delivery of the circuit or delivers a circuit that requires repair, Call America staff needs to move out the date of the porting order. The SBC order processors sometimes make mistakes writing the orders, which cause the customer's telephone service to be disconnected on the original port date. When this happens, the workflow in the office is disrupted as Call America staff works with SBC/AT&T to restore service. These kinds of outages cause additional delays because customers often reconsider if they want to be moved to the switch, out of fear of more service outages. These outages also cause Call America staff to spend many extra hours double-checking SBC/AT&T's data entry (where possible) in an attempt to avoid service outages. When this process is repeated several times in a week, it causes additional delays, requiring that more port orders be moved out and the process starts all over again. Delays build on delays, causing more delays, since each process is dependent on the one before it.

12. Call America has recently experienced a new type of delay: As soon as we submit some porting orders, our customers are receiving calls from the SBC/AT&T winback team. These calls have been received by Call America UNE-P customers, not SBC/AT&T customers moving to Call America. The winback representatives tell the customer that they called as a result of the porting order that Call America entered to move our existing customers from UNE-P to our switch. These calls can cause Call America to have to re-sell the account or, in some cases, reassure the customer after their conversation with the SBC/AT&T sales representative. This kind of delay can also force us to move out the due date of porting orders, starting the scenario described above, in which SBC/AT&T-caused problems are visited on our customers. Our customers often believe that Call America has caused these problems, and often as a result of their conversations with SBC sales representatives. These SBC/AT&T winback activities have occurred too frequently immediately after submission of migration orders not to be a result of inappropriate sharing of our order activity with the SBC/AT&T sales teams.

13. In the past month, Call America has intensified its efforts to secure an agreement with SBC/AT&T to grant us an extension to complete our migration off of UNE-P. At the end of last month, we submitted a progress report regarding our migration process to SBC/AT&T. That report is attached to this Declaration as Exhibit 2. Based on the progress we have made to date and the pace of SBC/AT&T's responses to our orders – including the many failures and errors by SBC/AT&T – we do not believe that we can complete the transition process until early August. , Our SBC/AT&T Account Manager recently informed us that we will be granted no extension. We believe that, in light of SBC/AT&T's significant

failures and errors, SBC/AT&T is unreasonably withholding the requested extension. In no event should Call America be subject to this Commission's compulsory process, since we have worked diligently, within our company and with SBC/AT&T, to effect the full transition of our UNE-P services to our switch. In any event, given the problems we have experienced with SBC/AT&T's performance, we are skeptical that SBC/AT&T could effect the required transition by the 3/11/06 deadline, even if Call America were to submit valid orders for all of its customers by that time. Thus, a Commission injunction requiring us to submit such orders would have no effect on the pace of the transition.

Jeffrey Buckingham
President
Call America, Inc.

EXHIBIT 1

Because the Exhibit contains only confidential, proprietary information, it has been redacted in its entirety

EXHIBIT 2

Because the Exhibit contains only confidential, proprietary information, it has been redacted in its entirety

**BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Pacific Bell Telephone
Company, d/b/a SBC California for
Generic Proceeding to Implement Changes
in Federal Unbundling Rules Under
Sections 251 and 252 of the
Telecommunications Act of 1996

Application 05-07-024
(Filed July 28, 2005)

**DECLARATION OF
DANIEL MARGOLIS
CURATEL, LLC
IN SUPPORT OF
OPPOSITION TO "EMERGENCY" MOTION UNDER SEAL
BY
CALL AMERICA, INC. (U-6598-C),
CURATEL, LLC (U 6610 C),
DMR COMMUNICATIONS, INC. (U 6735 C),
TCAST COMMUNICATIONS, INC. (U-5633-C), AND
TRI-M COMMUNICATIONS, INC. D/B/A TMC COMMUNICATIONS (U-5928-C)**

**[REDACTED INFORMATION INDICATED ON THE FOLLOWING PAGES WITH THE
SYMBOL: (* * *)]**

**DECLARATION OF
DANIEL MARGOLIS
CURATEL, LLC**

1. My name is Daniel Margolis and I swear the following, subject to penalty for perjury. I am Director - Telecommunications Division of Curatel, LLC ("Curatel").¹ I have been an executive in the telephone industry since 1998, when I was a founder of Navigator Telecommunications LLC, serving in the role of VP Operations and CIO. Subsequently I served as Director of Operations of NetStream. In July 19, 2001, I joined Curatel. In August of 2003, Curatel's corporate parent applied for a Certificate of Public Convenience and Necessity from the California Public Utilities Commission ("Commission"). The Commission issued our Certificate at the beginning of January, 2004, and we commenced operations shortly thereafter.
2. Curatel serves approximately * * * local exchange customers with just over * * * lines. Most of our customers are located in the Los Angeles basin, our headquarters location. Until the past year, Curatel served its local exchange customers primarily through the unbundled network element ("UNE") platform ("UNE-P"). Most of our local exchange customers, over * * * , are already on SBC/AT&T's resale platform.
3. In October of 2005, after SBC/AT&T demanded the submission of a "transition plan" to move Curatel's customers off of the UNE Platform, Curatel submitted the plan that is attached as Exhibit 1 to this Declaration. As can be seen by reference to Curatel's transition plan, we will be moving all our UNE-P lines to resale due to the likelihood that we will not have a reasonable commercial agreement in time. As of today's date (2/23/06), we have submitted orders for * * * UNE-P lines to be moved to resale, and disconnected an additional lines from the UNE-P platform. This leaves approximately * * * lines that remain to be migrated. By submitting orders at the rate of * * * per day, we should be able to complete our transition – assuming SBC/AT&T works the orders

¹ In Attachment A to its so-called "Emergency Motion," SBC/AT&T lists "Adir International Export" as a CLEC that has "refused" to submit a transition plan. Although this Declaration shows that the assertion is incorrect, Curatel believes that SBC/AT&T is referring to it with the inclusion of the above name. Curatel's Certificate of Public Convenience and Necessity ("CPCN") was granted in the name of "Adir International Export Ltd d/b/a La Curacao." D.04-04-010. By letter of July 8, 2005, La Curacao informed the Commission that it was transferring its CPCN to its wholly-owned subsidiary, Curatel, LLC. SBC/AT&T has not changed its records to reflect this development. Throughout this Declaration, and in the accompanying Opposition to SBC/AT&T's "Emergency Motion," we refer to the entity that now holds the CPCN, Curatel, LLC, rather than to the parent company, against which SBC/AT&T filed its "Emergency Motion."

properly. Our understanding from working with other, similarly-situated CLECs, however, does not give us confidence that SBC/AT&T can work those orders in a timely fashion, even if we submit them timely.

4. For several months now, we have been negotiating with SBC (later, AT&T) to move our UNE-P lines to SBC/AT&T's so-called "Local Wholesale Complete" commercial arrangement. It would appear that we will not be able to complete our negotiations in time to meet the 3-11-06 deadline. Nonetheless, by submitting 350 orders per day, we should easily be able to complete our migration off of the UNE Platform by March 11, 2006.
5. We believe that, in light of SBC/AT&T's significant failures and errors, in no event should Curatel be subject to this Commission's compulsory process, since we have worked diligently, within our company and with SBC/AT&T, to effect the full transition of our UNE-P services to resale. In any event, given the problems the CLECs have experienced with SBC/AT&T's performance, we are skeptical that SBC/AT&T could effect the required transition by the 3/11/06 deadline, even if Curatel were to submit valid orders for all of its customers by that time. Thus, a Commission injunction requiring us to submit such orders would have no effect on the pace of the transition.

Daniel Margolis
Director - Telecommunications Division
Curatel, LLC

**BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Pacific Bell Telephone
Company, d/b/a SBC California for
Generic Proceeding to Implement Changes
in Federal Unbundling Rules Under
Sections 251 and 252 of the
Telecommunications Act of 1996

Application 05-07-024
(Filed July 28, 2005)

PUBLIC (REDACTED) VERSION OF

**DECLARATION OF
DAVID LEE, PRESIDENT AND CEO
DMR COMMUNICATIONS, INC.
IN SUPPORT OF
OPPOSITION TO "EMERGENCY" MOTION UNDER SEAL
BY
CALL AMERICA, INC. (U-6598-C),
CURATEL, LLC (U 6610 C),
DMR COMMUNICATIONS, INC. (U 6735 C),
TCAST COMMUNICATIONS, INC. (U-5633-C), AND
TRI-M COMMUNICATIONS, INC. D/B/A TMC COMMUNICATIONS (U-5928-C)**

**[REDACTED INFORMATION INDICATED ON THE FOLLOWING PAGES WITH THE
SYMBOL: (* * *)]**

**DECLARATION OF
DAVID LEE, PRESIDENT AND CEO
DMR COMMUNICATIONS, INC.**

1. My name is David Lee and I swear the following, subject to penalty for perjury. I am President and Chief Executive Officer of DMR Communications, Inc. I have been an executive in the telephone industry since 1994. I worked for MCI in a number of different positions until December of 1999. The last position that I held there was as a Region Director. I then worked for a couple of communications companies over the next two years as a VP of Sales. They were Prism Communications and Multacom. I started a company in September of 2001 that was a Master Agent for Cox Communications. In the summer of 2002, I formed DMR. In early October of 2002, DMR applied for a Certificate of Public Convenience and Necessity from the California Public Utilities Commission ("Commission"). The Commission issued our Certificate at the end of November, 2002, and we commenced operations shortly thereafter.

2. DMR serves approximately * * * local exchange customers with just under * * * lines. Most, though not all, of our customers are located in the Los Angeles basin, our headquarters location. Until the past year, DMR served its local exchange customers exclusively through the unbundled network element ("UNE") platform ("UNE-P").

3. In January of 2006, after SBC/AT&T demanded the submission of a "transition plan" to move DMR's customers off of the UNE Platform, DMR submitted the plan that is attached as Exhibit 1 to this Declaration. As can be seen by reference to DMR's transition plan, we will be moving about two-thirds of our UNE-P lines to our own switch and the remaining one-third to resale. We have approximately * * * lines that remain to be migrated to resale. By submitting orders at the rate of * * * per day, we should easily be able to complete our transition – assuming SBC/AT&T works the orders properly. Our experience to date, however, does not give us confidence that SBC/AT&T can work those orders in a timely fashion, even if we submit them timely.

4. I started to work on transitioning my customers off of UNE-P over a year ago. I first had to buy a switch, implement a network and arrange for its configuration in a workable manner. I started submitting orders for local interconnection trunks ("LIT") on January 13, 2006. SBC rejected my orders, first because it had failed to load my switch CLLI into its ordering system, even though I had submitted that information to SBC as far back as September 21, 2005. SBC then erroneously rejected my re-submitted LIT orders, around January 24, because of their configuration. I had to have my attorney speak with SBC's attorneys before SBC would accept my LIT orders. It was not until February 15, 2006, that I received firm order confirmations for my LITs. In January and early February I sent

repeated e-mails to my then-account manager, Cheryl Labat, and to her supervisor, Paul O'Sullivan asking for resolution of my LIT orders; I also asked for an extension of the March 11 deadline for transitioning off of UNE-P, since it is impossible to migrate customers to our switch without local interconnection trunks to connect our switch to the public switched telephone network. Since SBC takes over 30 business days to deliver LITs, once ordered, there is no way I will be able to complete my transition by the March 11 deadline.

5. In addition, SBC has only recently (on February 22nd) provided DMR with the necessary connectivity to be able to submit resale orders. These are new types of orders for us and will have to learn how to submit these properly. We are not a huge company and all have had to "stretch" just to get a network up and running.

6. We believe that, in light of SBC/AT&T's significant failures and errors, in no event should TMC be subject to this Commission's compulsory process, since we have worked diligently, within our company and with SBC/AT&T, to effect the full transition of our UNE-P services to resale. In any event, given the problems we have experienced with SBC/AT&T's performance, we are skeptical that SBC/AT&T could effect the required transition by the 3/11/06 deadline, even if TMC were to submit valid orders for all of its customers by that time. Thus, a Commission injunction requiring us to submit such orders would have no effect on the pace of the transition.

David Lee
President and Chief Executive Officer
DMR Communications, Inc.

**BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Pacific Bell Telephone
Company, d/b/a SBC California for
Generic Proceeding to Implement Changes
in Federal Unbundling Rules Under
Sections 251 and 252 of the
Telecommunications Act of 1996

Application 05-07-024
(Filed July 28, 2005)

PUBLIC (REDACTED) VERSION OF

**DECLARATION OF
ED SMART, VP - OPERATIONS
TCAST COMMUNICATIONS, INC.
IN SUPPORT OF
OPPOSITION TO "EMERGENCY" MOTION UNDER SEAL
BY**

**CALL AMERICA, INC. (U-6598-C),
CURATEL, LLC (U 6610 C),
DMR COMMUNICATIONS, INC. (U 6735 C),
TCAST COMMUNICATIONS, INC. (U-5633-C), AND
TRI-M COMMUNICATIONS, INC. D/B/A TMC COMMUNICATIONS (U-5928-C)**

**[REDACTED INFORMATION INDICATED ON THE FOLLOWING PAGES WITH THE
SYMBOL: (* * *)]**

**DECLARATION OF
ED SMART, VP - OPERATIONS
TCAST COMMUNICATIONS, INC.**

1. My name is Ed Smart and I swear the following, subject to penalty for perjury. I am Vice President of Operations at TCAST Communications, Inc. ("TCAST"). I have been an executive in the telephone industry since June of 1990, having served as Senior Manager of Operations at WCT/Frontier Communications from May of 1990 until June of 1996. In June of 1996, I joined TCAST. In September, 2001, TCAST applied for a Certificate of Public Convenience and Necessity from the California Public Utilities Commission ("Commission") to be a local exchange carrier. The Commission issued our Certificate on January 9, 2002, and we commenced operations shortly thereafter.
2. TCAST serves approximately * * * local exchange customers with approximately * * * lines. Most of our customers are located in the Los Angeles basin, our headquarters location. Until the past year, TCAST served its local exchange customers primarily through the unbundled network element ("UNE") platform ("UNE-P"). We do have a number of local exchange customers that are already on SBC/AT&T's resale platform.
3. In January of 2006, after SBC/AT&T demanded the submission of a "transition plan" to move TCAST's customers off of the UNE Platform, TCAST submitted the plan by an e-mail that is attached as Exhibit 1 to this Declaration. As can be seen by reference to TCAST's transition plan, we will be moving all our UNE-P lines to resale. As of today's date (2/23/06), we have submitted orders for * * * UNE-P lines to be moved to resale. This leaves approximately * * * lines that remain to be migrated. By submitting orders at the rate of * * * per day, we should easily be able to complete our transition – assuming SBC/AT&T works the orders properly.
4. When we received word from our attorney that SBC/AT&T had filed an "Emergency Motion" identifying TCAST as a CLEC that was "insufficiently adhering" to its agreed-to transition plan, we communicated with our SBC/AT&T account manager to inquire why we were so identified. We received an e-mail indicating that TCAST had been placed on that list in error (*see* Exhibit 2).
5. We subsequently received another e-mail from our account manager explaining that his earlier e-mail had, itself, been in error, and that TCAST's pace of submitting transition orders was inadequate to meet the deadline. Reference to Exhibit 3 will readily demonstrate that our account manager's arithmetic is faulty. As noted above, we have only * * * lines remaining to be transitioned and can easily accomplish that by submitting as few as * * * orders per day

between now and March 10, 2006. In fact, on several recent days, we have submitted as many as * * * migration orders, so it will not be a challenge for us to submit as few as * * * per day between now and the deadline.

6. Our understanding from working with other, similarly-situated CLECs, however, does not give us confidence that SBC/AT&T can work those orders in a timely fashion, even if we submit them timely. We believe that, in light of SBC/AT&T's significant failures and errors, in no event should TCAST be subject to this Commission's compulsory process, since we have worked diligently, within our company and with SBC/AT&T, to effect the full transition of our UNE-P services to resale. In any event, given the problems the CLECs have experienced with SBC/AT&T's performance, we are skeptical that SBC/AT&T could effect the required transition by the 3/11/06 deadline, even if TCAST were to submit valid orders for all of its customers by that time. Thus, a Commission injunction requiring us to submit such orders would have no effect on the pace of the transition.
7. Of paramount importance to TCAST, however, is that SBC/AT&T's assertions are entirely false as they relate to us: we submitted a mutually-acceptable transition plan and are faithfully adhering to it. We are outraged that we have been forced to expend resources and scarce employee time to respond to SBC/AT&T's so-called "Emergency Motion" at a time when we prefer to concentrate our time and resources on managing the transition in which we are fully engaged. The Commission should devote its resources to ensuring that SBC/AT&T behaves reasonably in this difficult transition period, rather than harassing CLECs that are doing their level best under the most trying of circumstances.

Edward Smart
VP – Operations
TCAST Communications